

Serial No. 09/942,021  
Amendment dated September 22, 2003  
Reply to Office Action of March 21, 2003

## **REMARKS**

### **1. Preliminary Remarks**

Claims 1-22 were pending with claims 1, 3, 6-13 and 18-21 withdrawn from consideration. Claims 2, 4, 5, 14-17 and 22 are being examined and are variously rejected under 35 U.S.C. § 101, the judicially created doctrine of obviousness-type double patenting, 35 U.S.C. §102, and 35 U.S.C. § 103(a). Claims 2, 4, 15, 17 and 22 have been cancelled herein. Claims 5 and 14 have been amended herein.

### **2. Remarks Concerning Objections and Rejections**

#### **a. Objection to Claim**

Claim 15 was objected to because of a misspelling and has been cancelled, thus mooted the Examiner's objection. Therefore, the objection may properly be withdrawn.

#### **b. 35 U.S.C. § 101**

Claims 2, 4-5, 14-17 and 22 were rejected under 35 U.S.C. §101 as double patenting in view of either U.S. Patent No. 5,807,818 or U.S. Patent No. 5,837,678. Claims 2, 4, 15, 17 and 22 have been cancelled and claims 5 and 14 have been amended, thus mooted the Examiner's rejection. Therefore, the rejection may properly be withdrawn.

#### **c. Judicially Created Doctrine of Obviousness-Type Double Patenting**

Claims 2, 4, 5, 14-17 and 22 were rejected under the judicially created doctrine of obviousness-type double patenting in view of various U.S. Patents as listed in the office action. Claims 2, 4, 15, 17 and 22 have been cancelled and claims 5 and 14 have been amended, thus mooted the Examiner's rejection. Claims 5 and 14 as amended are patentably distinct from the claims asserted by the Examiner to be conflicting. Therefore, the rejection may properly be withdrawn.

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d. 35 U.S.C. § 102(a)

Claims 2, 5, 14, 15, 17, and 22 were rejected under 35 U.S.C. § 102(a), as being anticipated by Weiss. Claims 2, 15, 17 and 22 have been cancelled and claims 5 and 14 have been amended, thus mooting the Examiner's rejection. Weiss does not teach or suggest inhibiting endothelial cell proliferation by contacting endothelial cells with a BPI protein product. Therefore, the rejection may properly be withdrawn.

e. 35 U.S.C. § 102(b)

Claims 2, 5, 15, and 17 were rejected under 35 U.S.C. § 102(b), as being anticipated by Opal. Claims 2, 15, and 17 have been cancelled and claim 5 has been amended, thus mooting the Examiner's rejection. Opal does not teach or suggest inhibiting endothelial cell proliferation by contacting endothelial cells with a BPI protein product. Therefore, the rejection may properly be withdrawn.

f. 35 U.S.C. § 103(a)

Claims 2, 5, 14, 15, 17 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Opal and Ooi. Claims 2, 15, 17 and 22 have been cancelled and claims 5 and 14 have been amended, thus mooting the Examiner's rejection. Either alone or in combination, Opal and Ooi do not teach or suggest inhibiting endothelial cell proliferation by contacting endothelial cells with a BPI protein product. Therefore, the rejection may properly be withdrawn.

**3. Conclusion**

In view of the foregoing amendments and remarks, it is believed that the claim objections and rejections under 35 U.S.C. §§§ 101, 102 and 103 as well as under the judicially created doctrine of obviousness-type double patenting may properly be withdrawn and that claims 5 and 14 as amended herein are in condition for immediate

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allowance. The Examiner is invited to telephone the undersigned to discuss any questions or be of any assistance to the Examiner in the reconsideration and allowance of this case.

Respectfully submitted,

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